

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ELIAS PEÑA, ISAIAH HUTSON, and  
RAY ALANIS,

Plaintiffs,

v.

CLARK COUNTY,

Defendant.

CASE NO. 3:21-cv-05411-DGE

ORDER ON MOTION FOR  
ATTORNEY FEES (DKT. NO. 181)

Presently before the Court is Plaintiffs' motion for attorney fees. (Dkt. No. 181.) For the reasons discussed below, the motion is GRANTED in part and DENIED in part.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiffs Elias Peña, Isaiah Hutson, and Ray Alanis are Latino employees of the Roads Division of Clark County's Public Works Department. (Dkt. Nos. 47-3 at 4; 53-1 at 5; 53-2 at 5.) In their Amended Complaint, Plaintiffs filed claims for denial of equal protection under 42 U.S.C. § 1983 and disparate treatment under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, and the Washington Law Against Discrimination ("WLAD"). (Dkt. No. 19.) Plaintiffs

1 also filed hostile work environment claims under Title VII, 42 U.S.C. § 1981, and WLAD. (*Id.*)  
2 On April 28, 2023, the Court granted in part Defendant’s motion for summary judgment,  
3 dismissing Plaintiffs’ claims for disparate treatment brought pursuant to Title VII and WLAD,  
4 Plaintiffs’ 42 U.S.C. § 1983 equal protection claims, and Plaintiffs’ 42 U.S.C. § 1981 claim  
5 against the County. (Dkt. No. 90.) The Court denied Defendant’s motion for summary  
6 judgment with respect to Plaintiffs’ Title VII and WLAD hostile work environment claims. (*Id.*)

7 Following trial, the jury returned a verdict in favor of Plaintiffs with respect to their  
8 claims under WLAD. (Dkt. Nos. 174, 175, 176.) The jury returned a verdict in favor of  
9 Defendant on each of Plaintiffs’ Title VII claims. (*Id.*)

## 10 II. LEGAL STANDARD

11 The lodestar method is “the default principle for fee calculation in Washington.” *See*  
12 *Brand v. Dep’t of Labor & Indus.*, 989 P.2d 1111, 1119 (Wash. 1999). Washington law  
13 presumes a properly calculated lodestar figure represents reasonable compensation for counsel.  
14 *Henningsen v. Worldcom, Inc.*, 9 P.3d 948, 959 (Wash. Ct. App. 2000).

15 The lodestar method multiplies “the number of hours the prevailing party reasonably  
16 expended on the litigation by a reasonable hourly rate.” *McGrath v. County of Nevada*, 67 F.3d  
17 248, 252 (9th Cir.1995). After calculating this, courts then assess whether it is necessary to  
18 adjust the presumptively reasonable lodestar figure based on twelve factors. *Id.* at 252 n. 4; *see*  
19 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir.1975) (describing the twelve factors)

### III. DISCUSSION

#### A. Plaintiffs' Motion for Attorney Fees

Plaintiffs seek \$1,130,293.75<sup>1</sup> in attorney fees, \$561,494.12 as a risk multiplier, and \$185,998.88 in litigation costs.<sup>2</sup> (Dkt. No. 181 at 3.) Plaintiffs contend this case involved extensive discovery, numerous depositions, multiple pre-trial motions and a complex trial which took nearly a month to complete. (Dkt. No. 181 at 5–7.) Plaintiffs' attorneys contend their hourly rates were reasonable and that they worked a reasonable number of hours. (*Id.* at 7–11.)

#### B. Defendant's Response

Defendant asks the Court to award Plaintiffs no more than \$507,463.75 in fees and \$112,213.77 in costs. (Dkt. No. 186 at 1.) Alternatively, Defendant asks the Court to reduce Plaintiffs' fees and costs by 45% and to deny Plaintiffs' request for a risk multiplier. (*Id.* at 1–2.) Defendant further asks the Court to find Plaintiffs' fees for attorneys and support staff were unreasonably high. (*Id.* at 9–11.)

#### C. Lodestar Analysis

##### 1. Reasonableness of Fees

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<sup>1</sup> Plaintiffs' counsel incurred \$1,122,988.25 in fees prior to the jury's verdict and uses this figure when calculating their proposed multiplier. (Dkt. No. 181 at 13.) The Court will do the same in calculating counsel's fee.

<sup>2</sup> On July 19, 2023, the Court issued an order striking Plaintiffs' request for costs without prejudice and directing Plaintiffs to file a separate motion for costs pursuant to Local Civil Rule 54(d). (Dkt. No. 189.) Plaintiffs filed a separate motion for costs on July 27, 2023. (Dkt. No. 197), which the Clerk's Office granted in part on August 29, 2023. (Dkt. No. 219.) On August 8, 2023, the Court issued an order clarifying its previous order and directing Plaintiffs to file a standalone motion for non-taxable costs. (Dkt. No. 209.) Plaintiffs filed a motion for non-taxable costs on August 15, 2023. (Dkt. No. 212.) The Court will issue a separate order on this motion.

1 “To inform and assist the court in the exercise of its discretion, the burden is on the fee  
2 applicant to produce satisfactory evidence—in addition to the attorney's own affidavits—that the  
3 requested rates are in line with those prevailing in the community for similar services by lawyers  
4 of reasonably comparable skill, experience and reputation.” *Blum v. Stenson*, 465 U.S. 866, 895  
5 n.11 (1984).

6 In determining hourly rates, the Court must look to the “prevailing market rates in the  
7 relevant community.” *Bell v. Clackamas County*, 341 F.3d 858, 868 (9th Cir. 2003). “Affidavits  
8 of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and  
9 rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are  
10 satisfactory evidence of the prevailing market rate.” *United Steelworkers of Am. v. Phelps*  
11 *Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). The court may also rely on its own knowledge  
12 and experience in determining what rates are reasonable. *See Salyer v. Hotels.com GP, LLC*,  
13 Case No. C13-1966-RSL, 2015 WL 3893079, at \*2 (W.D. Wash. June 23, 2015) (citing *Ingram*  
14 *v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011)).

15 In support of their motion, Plaintiffs submitted declarations from attorneys Roger  
16 Townsend and Leticia Saucedo, both of whom were attorneys of record in this case. (Dkt. Nos.  
17 182, 183.) Townsend has been licensed to practice law in Washington since 1995 and is a  
18 founding member of Breskin Johnson and Townsend PLLC (“BJT”), a Seattle-based  
19 employment law firm. (Dkt. No. 182 at 1.) Townsend’s hourly rate is \$555.00 per hour. (*Id.* at  
20 2.) Townsend’s partner, Dan Johnson, has practiced law in Washington since 1999 and is also a  
21 founding member of BJT. (*Id.*) Johnson participated in this case, and his hourly rate is \$555.00  
22 per hour. (*Id.*) Two BJT paralegals, Ann Iarossi and Jesica McClure, also worked on the case.  
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1 (*Id.*) Each has over 20 years of experience as a legal assistant/paralegal, and BJT bills clients  
2 \$180.00 per hour for their time. (*Id.*)

3 Leticia Saucedo is National Senior Counsel for the Mexican American Legal Defense and  
4 Educational Fund (“MALDEF”). (Dkt. No. 183.) Saucedo graduated from Harvard Law School  
5 in 1996, and currently serves as the Martin Luther King, Jr. Professor of Law at the University of  
6 California, Davis, where she teaches employment law, labor law, and torts. (*Id.* at 2.) She began  
7 her career as an academic in 2003, and previously served as a staff attorney for MALDEF. (*Id.*  
8 at 2–3.) Saucedo’s hourly rate is \$555.00 per hour. (*Id.* at 6.)

9 Several other MALDEF attorneys also participated in this case. Andres Holguin-Flores  
10 began practicing law in 2015. (*Id.* at 4.) He clerked for two federal judges and worked as a staff  
11 attorney for MALDEF from 2017 to 2023. (*Id.* at 4–5.) MALDEF billed \$360.00 per hour for  
12 Holguin-Flores’ work. (*Id.* at 6.) Luis Lozada graduated from law school in 2019, served as a  
13 clerk for two federal judges, and began working as a staff attorney for MALDEF in 2021. (*Id.* at  
14 5.) MALDEF bill clients \$310.00 per hour for Lozada’s time. (*Id.* at 6.) Fernando Nunez also  
15 graduated from law school in 2019 and served as a Term Law Clerk and a Career Law Clerk for  
16 a United States Magistrate Judge before joining MALDEF as a staff attorney. (*Id.* at 5–6.)  
17 MALDEF also bills \$310.00 per hour for Nunez’s time. (*Id.* at 6.)

18 Plaintiffs submitted a declaration from Thomas B. Vertetis, a managing partner at the  
19 firm of Pfau Cochran Vertetis Amala Law PLLC. (Dkt. No. 184.) Vertetis began practicing law  
20 in 1997, served as a judicial law clerk, and later worked as an assistant prosecutor in Middlesex  
21 County, New Jersey. (*Id.* at 1–2.) Vertetis began practicing law in Washington State in 2001  
22 and worked for several firms before starting his own in 2009. (*Id.* at 2.) Vertetis’ current  
23 practice primarily consists of representing plaintiffs in medical malpractice, civil rights, personal  
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1 injury, and elder abuse cases. (*Id.* at 3.) In his declaration, Vertetis asserts Townsend's rate of  
2 \$555.00 per hour is within the range of customary and reasonable rates charged by plaintiff  
3 employment attorneys in the Seattle area with comparable levels of experience and expertise.  
4 (*Id.* at 4.) Vertetis cites cases from this district in which judges have approved similar rates for  
5 himself and attorneys of comparable experience. (*Id.* at 4–5.)

6 Plaintiffs also submitted a declaration from James W. Beck, a partner at the firm of Beck  
7 Chase Gilman PLLC. (Dkt. No. 185.) Following a clerkship, Beck began working for the firm  
8 of Gordon Thomas Honeywell in Tacoma, where he became a partner in 2007. (*Id.* at 1–2.) In  
9 2021, he started Beck Chase Gilman PLLC with two of his colleagues. (*Id.* at 2.) Beck's  
10 practice focuses on plaintiffs' insurance coverage, wrongful death and catastrophic personal  
11 injury, and employment litigation. (*Id.*) Beck is familiar with hourly rates charged by Seattle-  
12 Tacoma area employment attorneys and is generally familiar with paralegal services and pricing.  
13 (*Id.* at 3–4.) Beck asserts the rates charged by BJT and MALDEF attorneys and paralegals are  
14 reasonable and within the customary rates charged in the local legal market by practitioners of  
15 similar experience and expertise. (*Id.* at 5.)

16 Defendant contends the rates requested by Plaintiffs' attorneys and support staff are  
17 unreasonably high. (Dkt. No. 186 at 9–11.) Defendant argues MALDEF attorneys have never  
18 tried a case in the Western District of Washington and notes Defendant's experienced trial  
19 attorneys charge far less than MALDEF's. (*Id.* at 11.)

20 The Court accepts the statements of attorneys Vertetis and Beck that the rates sought by  
21 BJT and MALDEF attorneys are in line with those charged by attorneys of comparable skill,  
22 experience and reputation in western Washington, and that the rates charged for the services of  
23 paralegals employed by BJT and MALDEF are also reasonable.

1 The Court also finds the rates requested are reasonable in light of rates approved by this  
 2 Court when considering comparable Washington attorneys. *See e.g., Berg v. Bethel School*  
 3 *District*, Case No. 3:18-cv 05345-BHS, Dkt. No. 199 at 4–6 (W.D. Wash. May 19, 2022)  
 4 (considering rates for several western Washington attorneys and finding reasonable rates of  
 5 between \$350.00 per hour for junior associates and \$600.00 per hour for senior partners);  
 6 *Allstate Indemnity Co. v. Lindquist*, Case No. 2:20-cv-01508-JLR, Dkt. No. 91 at 7–8 (W.D.  
 7 Wash. Sept. 16, 2021) (approving rates of between \$475.00 and \$700.00 per hour for attorneys  
 8 and a \$300.00 per hour rate for paralegals); *Thomas et al. v. Cannon, et al.*, Case No. 3:15-cv-  
 9 05346-BJR, Dkt. No. 374 at (W.D. Wash. Mar. 28, 2018) (approving attorney fees of \$600.00  
 10 per hour for a senior partner and \$275.00 for attorneys with three years’ experience; finding  
 11 \$150.00 per hour a reasonable rate for a paralegal with 16 years’ experience).

## 12 2. Reasonableness of Hours Worked

13 When submitting a motion for attorney fees, a prevailing party may submit records  
 14 containing entries for hours that are “excessive, redundant, or otherwise unnecessary.” *McCown*  
 15 *v. City of Fontana*, 565 F.3d 1097, 1102 (9th Cir.2008) (quoting *Hensley v. Eckerhart*, 461 U.S.  
 16 424, 434 (1983)). A district court may exclude such hours from an attorney fees motion using  
 17 one of two methods. The court may either: (1) conduct an “hour-by hour analysis of the fee  
 18 request” and exclude unreasonable hours; or (2) “when faced with a massive fee application the  
 19 district court has the authority to make across-the-board percentage cuts either in the number of  
 20 hours claimed or in the final lodestar figure as a practical means of [excluding non-compensable  
 21 hours] from a fee application.” *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1203 (9th Cir.  
 22 2013) (internal citations omitted).

1           The determination of fees “should not result in a second major litigation” and trial courts  
2 “need not, and indeed should not, become green-eyeshade accountants.” *Fox v. Vice*, 563 U.S.  
3 826, 838 (2011). The essential goal in shifting fees “is to do rough justice, not to achieve  
4 auditing perfection.” *Id.* Trial courts “may take into account their overall sense of a suit, and  
5 may use estimates in calculating and allocating an attorney's time.” *Id.*

6           Defendant contends Plaintiffs’ motion includes fees for hours not reasonably expended  
7 on the case and fees that are the result of overstaffing, attorney turnover, and wasteful discovery  
8 efforts. (Dkt. No. 186 at 3–6.) Defendant asks the Court to exclude from Plaintiffs’ fee vague or  
9 duplicative entries, non-contemporaneous bills, and those hours worked by attorney Andres  
10 Holguin-Flores, who withdrew from this case in April 2023. (*Id.* at 7–9.) Defendant asks the  
11 Court to limit Plaintiffs’ fees to those attributable to Plaintiffs’ successful WLAD claims. (*Id.* at  
12 6–7.)

13           Where a plaintiff has obtained excellent results, his or her attorney should recover a full  
14 compensatory fee. *Hensley*, 461 U.S. at 435. Normally this will encompass all hours reasonably  
15 expended on the litigation, and indeed in some cases of exceptional success an enhanced award  
16 may be justified. *Id.* In these circumstances the fee award should not be reduced simply because  
17 the plaintiff failed to prevail on every contention raised in the lawsuit. *Id.* On the other hand, if  
18 a plaintiff has achieved only partial or limited success, “the product of hours reasonably  
19 expended on the litigation as a whole times a reasonable hourly rate may be an excessive  
20 amount.” *Id.* at 436.

21           There is no precise rule or formula for making these determinations. *Id.* at 436–437. The  
22 district court may attempt to identify specific hours that should be eliminated, or it may simply  
23 reduce the award to account for the limited success. *Id.* However, in determining an appropriate  
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1 attorney's fee, the "result is what matters" and the most critical factor is "the degree of success  
2 obtained." *Id.* at 435–436.

3 Here, the jury returned a verdict in favor of Plaintiffs with respect to their claims under  
4 WLAD while finding for Defendant on each of Plaintiffs' Title VII claims. (Dkt. Nos. 174, 175,  
5 176.) The jury awarded \$200,000.00 in damages per Plaintiff, considerably less than the  
6 \$800,000.00 requested.

7 Plaintiffs' attorneys fell short of complete success. Nevertheless, as discussed below,  
8 Plaintiffs' counsel took a risk in taking on this case, the outcome of which hinged in large part on  
9 whether the jury believed their clients over the numerous witnesses presented by Defendant. The  
10 fact that the jury ultimately found for Plaintiffs reflects a significant degree of success on the part  
11 of Plaintiffs' attorneys. Nevertheless, the Court finds it appropriate to reduce the requested fee  
12 by 10% to account for the failure to prevail on the Title VII claims and the reduced damage  
13 award from the jury. With respect to Defendant's other contentions, the Court reduces Plaintiffs'  
14 fee by an additional 2.5% to account for overstaffing and excess effort. *See e.g., Universal*  
15 *Elecs., Inc. v. Universal Remote Control, Inc.*, 130 F. Supp. 3d 1331, 1335 (C.D. Cal. 2015)  
16 ("There is a growing trend that District Court judges should award fees based on an overall  
17 global understanding and review of a case, rather than on a tedious review of voluminous time  
18 entries and hourly rates.").

19 Plaintiffs incurred \$1,122,988.25 in fees prior to the jury's verdict. Reducing these fees  
20 by 12.5% results in a total fee of \$982,614.72.

#### 21 **D. Multiplier Analysis**

22 Plaintiffs ask the Court to adjust the lodestar figure upward by 50% to account for the  
23 risk associated with taking on this case. (Dkt. No. 181 at 12–13.)  
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1 Under Washington law, adjustments to the lodestar are considered “under two broad  
2 categories: the contingent nature of success, and the quality of work performed.” *Bowers v.*  
3 *Transamerica Title Ins. Co.*, 675 P.2d 193, 204 (Wash. 1983). In adjusting the lodestar to  
4 account for the risk factor, the trial court must assess the likelihood of success at the outset of the  
5 litigation. *Id.*

6 The two firms representing Plaintiffs took this case on a contingency fee basis. In  
7 addition to the risks typically associated with taking a case on contingency, Plaintiffs’ attorneys  
8 contend they took a higher-than-usual degree of risk in taking on this case because of the lack of  
9 documentary evidence, the absence of witnesses likely to substantiate Plaintiffs’ claims, and the  
10 lack of any wage loss damages. (Dkt. No. 181 at 4–5.) Defendant contends a contingency  
11 multiplier is inappropriate in this case because Plaintiffs’ requested fees are already excessive  
12 and duplicative. (Dkt. No. 186 at 11–12.)

13 As the Court has previously noted, the dispositive issue in this case was the credibility of  
14 the witnesses. (See Dkt. No. 223.) Because the outcome of this case depended on whether the  
15 jury believed Plaintiffs over the numerous witnesses presented by Defendant, the likelihood of  
16 success at the outset was highly uncertain. “The contingency adjustment is based on the notion  
17 that attorneys generally will not take high risk contingency cases, for which they risk no recovery  
18 at all for their services, unless they can receive a premium for taking that risk.” *Chuong Van*  
19 *Pham v. City of Seattle, Seattle City Light*, 151 P.3d 976, 983 (Wash. 2007). The possibility of  
20 attorneys investing significant time and effort in a civil rights-based contingency fee case, only  
21 to recover nothing, is far from theoretical. See e.g., *Nelson v. Thurston County et al.*, Case No.  
22 3:18-cv-05184-DGE at Dkt. No. 379.

1 Having reviewed precedent cited by Plaintiffs, the Court finds a multiplier of 33% is an  
2 appropriate adjustment for the risk incurred by counsel in taking on this case. (See Dkt. No.  
3 182.) The Court finds this figure is adequate to account for the risk taken by Plaintiffs' counsel,  
4 provides an incentive for other attorneys to take on civil rights cases, and avoids a windfall.  
5 *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008); *Allison v. Housing Auth. of*  
6 *City of Seattle*, 821 P.2d 34, 37 (Wash. 1991).

7 Multiplying the adjusted lodestar figure of \$982,614.72 by 0.33 results in a contingency  
8 multiplier of \$324,262.86. Adding the two figures together results in a total fee award of  
9 **\$1,306,877.58.**

#### 10 IV. ORDER

11 Plaintiffs' motion for attorney fees (Dkt. No. 181) is GRANTED in part and DENIED in  
12 part. Plaintiffs' total attorney fee award shall be **\$1,306,877.58.**

13 Dated this 1st day of December, 2023.

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16 David G. Estudillo  
17 United States District Judge  
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